also divided as to whether the suit is "upon" the old debt or on the new promise. *Re Salmon* (1917, C. C. A. 2d) 249 Fed. 300; *Richardson v. Bricker* (1883) 7 Colo. 58, 1 Pac. 433; *cf.* COMMENT (1919) 28 YALE LAW JOURNAL, 817. The power of the debtor to make the new terms conditional, to become bound for part only of the old debt, and the fact that he is not liable for each installment until the set dates, when the new promise is to pay in installments, tend to prove that the action is "on" the new promise. *Cf. Batchelder v. Batchelder* (1868) 48 N. H. 23; *cf. Wiley v. Brown* (1894) 18 R. I. 615, 30 Atl. 464; *cf. Shaw v. Newell* (1851) 1 R. I. 488. The decision in the principal case seems sound and the result is satisfactory. For the effect of an addition by the legislature to the statutory period of limitation, see COMMENT (1919) 29 YALE LAW JOURNAL, 91.

SURETYSHIP—GUARANTY—ACCEPTANCE—NOTICE.—The defendant, by a writing "in consideration of the sum of one dollar and other valuable considerations, the receipt whereof is hereby acknowledged," guaranteed the prompt payment of all purchases up to the amount of $25,000 made and to be made by the Rothacker Rubber Company from the plaintiff. The guaranty was expressed to be continuing and to be terminable only by notice by the guarantor. The plaintiff sued to recover the amount of unpaid purchases, which was less than the amount guaranteed. *Held,* that he could not recover, because there was no averment of notice of acceptance of the guaranty. *Ajax Rubber Co. v. Gam* (1919, Del. Super. Ct.) 105 Atl. 834.

Where a "guaranty" is merely an offer, not made at the request of the guarantee, notice is generally held necessary to bind the guarantor at all. *Davis Sewing Machine Co. v. Richards* (1885) 115 U. S. 524, 6 Sup. Ct. 173; *Balfour v. Knight* (1917) 86 Ore. 165, 167 Pac. 484. But where the "guaranty" embodies a complete contract, it is binding upon the guarantor without notice. *United States Fidelity & Guaranty Co. v. Riefler* (1915) 239 U. S. 17, 36 Sup. Ct. 12; *Great Western Mfg. Co. v. Porter* (1918) 103 Kan. 84, 172 Pac. 1018. Nor is notice held to be necessary where the "guaranty" is made upon the request of the guarantee. *Peck v. Precision Mch. Co.* (1917, Ga. Ct. App.) 93 S. E. 106. Likewise with a guaranty which, as in the principal case, recites consideration already received from the guarantee. *Davis v. Wells* (1881) 104 U. S. 159; *Emerson Mfg. Co. v. Tved.* (1909) 19 N. D. 8, 120 N. W. 1094. In view of these holdings, it is submitted that the principles of offer and acceptance in the formation of contracts underlie such cases. See Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 169, 173. A recent contract case is clearly analogous to the instant case. A contract—made for a consideration—to supply any quantity of flasks ordered by the customer at a certain price was held binding. *Koehler & Hinrichs Mercantile Co. v. Illinois Glass Co.* (1919, Minn.) 173 N. W. 703. In the principal case the contract is that the defendant shall be secondarily liable for debts of the principal to the plaintiff up to a certain amount. Both situations have all the elements of a binding option. See COMMENT (1918) 28 YALE LAW JOURNAL, 65. And it is believed that the court erred in requiring notice to bind the defendant. For it seems that the furnishing of a "guaranty" upon request of the guarantee is an acceptance by the guarantor of the guarantee's offer, and that a valid contract is thereby formed. *Cf. Peck v. Precision Mch. Co., supra.* And the recital of consideration paid is not merely evidence of consideration for the guarantor's promise, but also evidence of the offer which is thereby accepted. This is shown by the fact that (if there was some other consideration) no notice is required, although the particular recited consideration was not in fact given. See *Lawrence v. McCalmont* (1844, U. S.) 2 How. 426, 452; see *Bond v. Farwell Co.* (1909, C. C. A. 6th) 172 Fed. 58, 61. However, it has been held that such a "guaranty" is an offer for a unilateral contract to be

accepted by the advance of credit by the guarantee, and that notice is only a condition precedent to a *suit* against the guarantor. *Bishop v. Eaton* (1894) 161 Mass. 496, 37 N. E. 665; *Somersall v. Barneby* (1611, K. B.) Cro. Jac. 287; *Powers v. Bumcratz* (1861) 12 Oh. St. 273. This view seems sound wherever a "guaranty" is not an acceptance, for consideration received *at the time*, of an offer by the guarantee, as above indicated. Some cases have held that notice is necessary to bind a "guarantor," but not a "surety." *Homewood People's Bank v. Hastings* (1919, Pa.) 106 Atl. 308; *Hess v. Watkins Medical Co.* (1919, Ind. App. Ct.) 123 N. E. 440. But no satisfactory criterion for the classification of "sureties" and "guarantors" was advanced, and such a division seems superfluous and unsound

TORTS—FRAUD AND DECEIT—LIMITATION OF ACTIONS—DAMAGES.—The defendant fraudulently concealed and misrepresented the actual facts which resulted in the death of the plaintiff's husband. As a result, the plaintiff did not sue during the period in which the wrongful death statute allowed an action. Having subsequently discovered the fraud of the defendant and that she had once had a good cause of action, the plaintiff sued in deceit for the resulting damages. *Held*, that she was entitled to recover, because the damages were not speculative and the limitation by the statute for wrongful death was no bar to an action in deceit. *Desmaris v. People's Gaslight Co.* (1919, N. H.) 107 Atl. 491.

The principal case was not governed by the wrongful death statute, because suit within two years after death is made a condition precedent by that statute to the right to recover. *Poff v. Telephone Co.* (1903) 72 N. H. 164, 55 Atl. 891; *De Martino v. Siemon* (1916) 90 Conn. 527, 97 Atl. 765. In this action of deceit the plaintiff had to prove that she had once had a claim under the wrongful death statute; that the defendants made false representations; that these prevented her from the action under the statute; and that she had suffered damages thereby. The plaintiff's damages were the value of the lost claim. See *Ochs v. Woods* (1917) 221 N. Y. 335, 341, 117 N. E. 305, 307; see *Urtz v. N. Y. C. & H. R. R. R.* (1911) 202 N. Y. 170, 181, 95 N. E. 711, 714. These damages were not speculative. *Alexander v. Church* (1885) 53 Conn. 561, 4 Atl. 103. The reason appears to be that the jury would determine and award the value of the lost claim, and not the amount of damages a jury hearing the original cause of action would have given. However, such damages have been held speculative, in what appears to be a very unsatisfactory decision. *Whitman v. Seaboard Air Line Co.* (1917, S. C.) 92 S. E. 861. It is not a condition precedent to the plaintiff's recovery in such cases that he investigate the truth of the defendant's representations; he is protected in relying on them without investigation. *Laird v. Keithley* (1918, Mo.) 201 S. W. 1138. The reasoning in the principal case seems sound, and the result reached is desirable and just. Other courts might well follow this case in order that such a statutory limitation may not be misused to work injustice.

TORTS—LIBEL—SECONDARY PUBLICATION.—One of two defendants claimed that he was liable only for secondary, and not primary, publication of a libel. An instruction was given that, if the jury found for the plaintiff, it should assess certain specified damages, including an item for injuries resulting from the original publication. *Held*, that the instruction was erroneous. *Sourbier v. Brown* (1919, Ind.) 123 N. E. 802.

In the instant case, secondary publication is used in a limited sense to mean the exhibition of an original libelous article. This term, however, is generally used to mean the distribution of copies of a libel. It seems well settled that